

EXHIBIT 5

Gerard F. Dillon, M.D.

Thomas vs. ECFMG, et al.

January 17, 2014

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION</p> <p>-----</p> <p>MATHEW THOMAS, JR. : CIVIL ACTION vs. : ECFMG, et al. : NO. 13-3946</p> <p>-----</p> <p style="text-align: center;">Friday, January 17, 2014</p> <p>-----</p> <p>Oral deposition of GERARD F. DILLON, M.D., Ph.D., held at NATIONAL BOARD OF MEDICAL EXAMINERS, 3750 Market Street, Philadelphia, Pennsylvania, beginning at approximately 3:15 p.m., on the above date, before LANCE A. BRUSILOW, Registered Professional Reporter, Approved Reporter for the United States District Court, and Notary Public, there being present.</p> <p>-----</p> <p>brusilow + associates 255 South 17th Street Suite 1503 Philadelphia, PA 19103 215.772.1717 www.brusilow.com</p> <p>-----</p>	<p style="text-align: right;">Page 3</p> <p>1 (It is hereby agreed by and among 2 counsel that signing, sealing, certification and 3 filing are waived; and that all objections, except 4 as to the form of the question, are reserved until 5 the time of trial)</p> <p>6 MS. HOLLAND: Before we start, I'd like 7 to lodge the objection that I've lodged with the 8 previous two witnesses on the record in front of 9 Dr. Dillon.</p> <p>10 DR. THOMAS: Sure.</p> <p>11 MS. HOLLAND: Dr. Dillon, I have 12 instructed previous witnesses, for the purpose of 13 the integrity of the exam, that I will instruct 14 you as well not to answer any questions that would 15 compromise the integrity of the examination in 16 terms of test content or arriving at decisions 17 with regard to particular examinees.</p> <p>18 In addition, because of concerns about 19 copyrighted material, and with particular concern 20 to Dr. Thomas, who has previously admitted that he 21 still has contact with students and employees from 22 Optima University, that due to those privacy 23 considerations I'm asking all witnesses not to 24 answer any questions that would identify test</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>SOUTHERN MEDICAL GROUP BY: MATHEW THOMAS, JR., M.D. 326 East 149th Street Bronx, NY 10541 ph: 718.585.6262 (mthomas1@sbhny.org) Counsel for Plaintiff</p> <p>MORGAN, LEWIS & LEWIS, LLP BY: ELISA P. McENROE, ESQUIRE 1701 Market Street Philadelphia, PA 19103-2921 ph: 215.963.5917 (emcenroe@morganlewis.com) Counsel for ECFMG and William C. Kelly, M.S.</p> <p>HAMBURG & GOLDEN, P.C. BY: MAUREEN P. HOLLAND, ESQUIRE 1601 Market Street, Suite 3310 Philadelphia, PA 19103-143 ph: 215.255.8584 (hollandmp@hamburg-golden.com) Counsel for Gerard F. Dillon, M.D., Steven Haist, M.D. and Janet Carson, Esquire</p> <p>NATIONAL BOARD OF MEDICAL EXAMINERS BY: SUZANNE WILLIAMS, ESQUIRE 3750 Market Street Philadelphia, PA 19104-3102 Ph: 215.590.9538 (swilliams@nbme.org) Counsel for NBME</p>	<p style="text-align: right;">Page 4</p> <p>1 information, copyrighted information. 2 THE WITNESS: I understand. Okay. 3 GERARD F. DILLON, M.D., Ph.D., having 4 been first duly sworn, was examined and testified 5 as follows: 6 (EXAMINATION) 7 BY DR. THOMAS: 8 Q. Good afternoon, Dr. Dillon. 9 A. Good afternoon. 10 Q. Could you please state your full name for the 11 record? 12 A. Sure: Gerard F. Dillon. 13 Q. Could you please tell me your background and 14 educational training? 15 A. My formal training is in educational 16 psychology. I have a Ph.D. from Temple University. 17 That's my formal training. I've also, of course, had a 18 lot of experience here with the national board. 19 Q. Do you have any other degrees, licenses or 20 certifications? 21 A. I do not. 22 Q. Could you please state what your current 23 position is here at the NBME? 24 A. I'm the vice-president for licensing programs.</p>

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<p>1 Q. And as the vice-president of licensing 2 programs, could you please give me what your job 3 responsibilities are?</p> <p>4 A. Sure: I'm responsible for the overall 5 coordination of the examination programs that were used 6 to make licensing decisions for several professions in 7 the United States. The primary one is the medical 8 profession, so it's the United States Medical Licensing 9 Examination. That's the main responsibility.</p> <p>10 Also, I have some responsibility for 11 examinations that we produce that are used by 12 veterinarians to license vets and some other, smaller 13 programs that are used for some local licensing 14 decisions.</p> <p>15 Q. Are you a medical doctor?</p> <p>16 A. I am.</p> <p>17 Q. Does any of your training give you insight to 18 USMLE-type questions?</p> <p>19 A. Not in terms of the medical content. I do 20 have training in testing, so I have insight into the 21 formats of test questions.</p> <p>22 Q. Prior to coming to the NBME -- before that, 23 how long had you been working for the NBME?</p> <p>24 A. It will be forty years in April.</p>	<p>1 A. I have some familiarity.</p> <p>2 Q. Could you tell me how many cases were filed 3 against Optima University by the NBME?</p> <p>4 MS. HOLLAND: Objection on the basis 5 that I stated before.</p> <p>6 DR. THOMAS: To state how many cases? 7 It's public knowledge how many cases are. . .</p> <p>8 MS. HOLLAND: Oh, how many cases. . .</p> <p>9 DR. THOMAS: How many cases are open or 10 how many cases --</p> <p>11 MS. HOLLAND: That's fine, I withdraw 12 my objection.</p> <p>13 THE WITNESS: I don't know the answer. 14 BY DR. THOMAS:</p> <p>15 Q. Do you know of any open case against Optima 16 University?</p> <p>17 A. I don't know that I understand what "open" 18 means.</p> <p>19 Q. Is there any case or cases pending in judgment 20 by a judge by NBME against Optima University?</p> <p>21 A. I don't know the answer.</p> <p>22 Q. Are you aware of any summary judgment made in 23 any cases by NBME against Optima University?</p> <p>24 A. I personally don't, no.</p>
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<p>1 Q. Where were you working before that?</p> <p>2 A. Before that I worked at a medical center in 3 Philadelphia briefly.</p> <p>4 Q. Before attaining your role of vice-president 5 of licensing programs, what was your role and how 6 long -- what was your role?</p> <p>7 A. I've been in my current role for twelve years. 8 Prior to that I worked in our psychometrics unit and 9 was responsible for the coordination of the scoring and 10 reporting of results for many of our examinations.</p> <p>11 Q. Were you involved with the actual scoring, or 12 just the information that came from the scoring?</p> <p>13 A. We were responsible for coordinating the 14 scoring, so we would establish the schedule, work with 15 the other units that actually did the scoring.</p> <p>16 Q. Were you privy to the programs that would do 17 the scoring for any exam?</p> <p>18 A. I was not directly involved with the programs.</p> <p>19 Q. Would you know the programs used for scoring 20 USMLE?</p> <p>21 A. No, not actually -- I don't have any direct 22 knowledge of it.</p> <p>23 Q. Are you familiar with the case against Optima 24 University?</p>	<p>1 Q. Could you please tell me your involvement in 2 any case against Optima University by NBME?</p> <p>3 A. Well, in my role as the vice-president for 4 licensing programs, I would have general knowledge of 5 any issues that came up around security of the 6 examination, so I would have a general knowledge.</p> <p>7 Another part of my responsibility is to 8 coordinate the activities that are associated with some 9 of our governing groups, which include the groups that 10 deal with score validity and irregular behavior.</p> <p>11 So, I would have some involvement in 12 organizing those meetings and acting as a resource 13 person for that activity.</p> <p>14 Q. Are you an actual member of the committee for 15 score validity?</p> <p>16 A. No.</p> <p>17 Q. Are you an actual member of the composite 18 committee?</p> <p>19 A. I am not.</p> <p>20 Q. Could you tell me when you first came to know 21 about any issues regarding Optima University?</p> <p>22 MS. HOLLAND: Object to that question 23 on the grounds that I've stated before.</p> <p>24 DR. THOMAS: Can I go off the record,</p>

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<p>1 please?</p> <p>2 (There was a discussion held off the</p> <p>3 record)</p> <p>4 (The record was read by the court</p> <p>5 reporter as requested)</p> <p>6 MS. HOLLAND: I object on the basis</p> <p>7 that I objected before.</p> <p>8 DR. THOMAS: You're instructing the</p> <p>9 witness not to answer?</p> <p>10 MS. HOLLAND: That's correct.</p> <p>11 BY DR. THOMAS:</p> <p>12 Q. What role did you play in determining whether</p> <p>13 or not a student had to go before the committee for</p> <p>14 score validity?</p> <p>15 A. Actually very little. What would trigger an</p> <p>16 individual going before the committee on score validity</p> <p>17 would be evidence that would link them to the Optima</p> <p>18 program, which was not something that was really done</p> <p>19 within my unit.</p> <p>20 Q. Are you aware of a committee that would have</p> <p>21 reviewed any potential exams taken by a student who</p> <p>22 participated in Optima University that would have then</p> <p>23 referred the case to the Office of the Secretariat?</p> <p>24 A. I'm sorry, I didn't quite understand.</p>	<p>1 that time frame, to say that it was around the same</p> <p>2 time that they went to Optima and took the exam and,</p> <p>3 therefore, would have to move forward?</p> <p>4 A. I don't know specific individuals. It was my</p> <p>5 understanding it was something being handled, I think,</p> <p>6 mostly by our legal department with help from other</p> <p>7 departments, but I don't know any specific individuals.</p> <p>8 I don't know who they are.</p> <p>9 Q. Were you ever part of a staff committee that</p> <p>10 reviewed any students that went to Optima University</p> <p>11 and had data given to that staff to determine whether</p> <p>12 they should move forward to the Office of the</p> <p>13 Secretariat for referral to the committee of score</p> <p>14 validity?</p> <p>15 A. No. I was actually asked for some cases to be</p> <p>16 involved in that process. I don't know that it was all</p> <p>17 of them, but for some of them.</p> <p>18 Q. Was there a reason why you would be referred</p> <p>19 to some but not others?</p> <p>20 A. No. I think this played out over a long period</p> <p>21 of time, and each case had some slight variations in</p> <p>22 it. I don't know all of them necessarily called for</p> <p>23 exactly the same steps and individuals being involved.</p> <p>24 Q. Were you involved in the committee that</p>
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<p>1 Q. If a student was found to have gone to Optima</p> <p>2 University, what is your understanding as to what would</p> <p>3 be the next step with the test they took or the score</p> <p>4 they received?</p> <p>5 A. I still -- I'm not quite getting the sequence.</p> <p>6 Q. A student is found to have attended Optima</p> <p>7 University.</p> <p>8 A. Right.</p> <p>9 Q. That knowledge is given to or discovered by</p> <p>10 NBME. What is the next step?</p> <p>11 A. My understanding was that it may not have been</p> <p>12 as simple as that they were connected -- that they were</p> <p>13 known to attend Optima University. I think it also had</p> <p>14 to do with the timing of the attendance and so forth.</p> <p>15 I think probably that was all dependent on</p> <p>16 whatever went on to look at the test content that was</p> <p>17 found at Optima.</p> <p>18 But my understanding is, once there is a</p> <p>19 connection made between the individual and the Optima</p> <p>20 program plus their having taken USMLE, and if the time</p> <p>21 was generally appropriate, then that person would be</p> <p>22 referred to the committee on score validity. That's my</p> <p>23 understanding of the process.</p> <p>24 Q. Can you identify who would have determined</p>	<p>1 discussed the data given for the exam taken by Mathew</p> <p>2 Thomas on December 31, 2007, Step 2 CK?</p> <p>3 A. I don't recall. I'm saying no. I just don't</p> <p>4 recall.</p> <p>5 Q. Who would have determined the criteria for</p> <p>6 whether or not a student would be referred forward?</p> <p>7 A. Part of it is established by policies that</p> <p>8 govern cases that are thought to be related to either</p> <p>9 score validity or irregular behavior.</p> <p>10 So, there already are some fairly well-defined</p> <p>11 policies that are established by our governance</p> <p>12 committees outside of staff, so I think part of it</p> <p>13 would be guided by that.</p> <p>14 Typically for those kinds of decisions it</p> <p>15 could involve several units. It almost always involves</p> <p>16 our legal department. It could involve people involved</p> <p>17 in the USMLE program.</p> <p>18 There is an Office of the Secretariat that</p> <p>19 really is part of the USMLE program and it could have</p> <p>20 involved others, including whether or not we need input</p> <p>21 from people who know something about test development,</p> <p>22 school rating and so forth.</p> <p>23 So, it could involve different things, again</p> <p>24 depending on the circumstances of the case.</p>

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<p>1 Q. Just to clarify, when you state "legal 2 counsel," are you including the secretariat as part of 3 that group or separate? 4 A. Separate. 5 Q. You say that the policies talk towards what 6 would determine indeterminate or irregular behavior. 7 Were there any specific numerical numbers in 8 terms of variations that are stated in the policies, to 9 your knowledge? 10 A. The policies talked about the process to be 11 involved. I don't know that there is a lot of detail 12 in terms of specific admission. I don't recall 13 specific numbers. I don't recall that there are 14 specific numbers. 15 Q. If a student attended Optima University and 16 Optima University was alleged to have access to USMLE 17 questions, would you say that is enough to bring them 18 before the committee for score validity? 19 A. Those would be part of the criteria. They 20 would have to have taken USMLE, because remember, the 21 committee for score validity, their focus is on whether 22 or not -- actually, passing outcomes in USMLE are 23 really a valid representation of the true ability of 24 the students, so there also would have to have been</p>	<p>1 I think all those are basically the key 2 readings, I think, for cases that went before the score 3 validity committee, especially -- for Optima students, 4 that was probably all the ingredients for referral. 5 Q. What about the actual data sets that are 6 given? Did they have any bearing on whether or not 7 they went forward to the committee? 8 A. I think the key reading was the passing 9 performance because that's really what the committee 10 was concerned about. 11 Q. Could you elaborate a little bit more? 12 A. In terms of focus on data, really the main 13 focus is going to be -- for example, if someone was a 14 failing examinee, that individual would not be referred 15 to the score validity committee because, at least by 16 policy right now, the main concern of that group is on 17 whether or not a passing outcome is really a valid 18 outcome. That would be the key reading. 19 Q. So, based on what you're saying, going to 20 Optima University, taking the exam, and coinciding with 21 the time they were at Optima University and a pass 22 score would be the criteria to bring you towards the 23 committee on score validity? 24 A. I could say those are the key ingredients.</p>
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<p>1 some test-taking that was involved in the USMLE that 2 would have occurred. 3 Q. So, in theory, if a student is a first-time 4 test-taker after going to Optima University, would you 5 have done an analysis and then compared data, or would 6 have you said this is their first exam, so they don't 7 have to go before the committee on score validity? 8 A. I don't ever remember there being any criteria 9 that had to do with first-taker versus repeater. 10 So, the answer is -- the first-takers I don't 11 think would be excused from consideration in terms of 12 whether or not they would go to any score validity 13 committee. 14 Q. So, my next question would be, how would you 15 then determine -- you're given the data sets. How do 16 you determine this one should go to score validity and 17 this one should not? 18 A. Again, the criteria is still the same: They 19 have to do, at least in this instance, with either 20 participation or some connection with the Optima 21 University. The timing of that generally coincides 22 with when the material was available to Optima. The 23 individual would have had to have taken USMLE and had a 24 passing outcome.</p>	<p>1 From case to case there could be differences where 2 other features might also come to bear on the referral. 3 It's difficult to sort of summarize those, but 4 I think we always recognize that there could be 5 variations from case to case. 6 Q. Can you elaborate one or two examples of what 7 would say a person who hits those three key criteria 8 does not have to move forward to the committee of score 9 validity? 10 A. No, I can't think of any examples, but I'm 11 just avowing to that possibility because no two cases 12 are ever quite exactly the same. 13 Q. Is the burden of proof, then, on the 14 individual to prove that they had a valid exam? 15 A. That's a little bit out of my area of 16 expertise. 17 Q. I guess before the committee on score 18 validity, isn't the burden of proof on the person, the 19 student, or is the burden on the committee to prove 20 that the student did do something that was 21 inappropriate? 22 A. I don't think I would use the word "prove." 23 Maybe it would be helpful for me to talk about what the 24 task of the committee is.</p>

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<p>1 Q. Sure.</p> <p>2 A. Really, the main reason why -- the main focus</p> <p>3 of the committee, and I've alluded to this before, is</p> <p>4 to decide, and it's in their judgment to decide whether</p> <p>5 or not there is any evidence that would make them want</p> <p>6 to question or worry a bit about the validity of a</p> <p>7 passing outcome, and that's really their main task.</p> <p>8 They use all the data -- all the data we</p> <p>9 talked about before is brought to their attention. The</p> <p>10 individual involved can also speak to the committee and</p> <p>11 can be represented and so forth.</p> <p>12 But really the notion -- really the task is</p> <p>13 for them to decide whether or not there might be reason</p> <p>14 to have the individual re-demonstrate their abilities</p> <p>15 to validate that original score.</p> <p>16 So, I don't know if it's really proof or not.</p> <p>17 In terms of legal terms, that's outside my area of</p> <p>18 expertise.</p> <p>19 Q. Okay. You do have extensive experience with</p> <p>20 exams, creating them and scoring them, yes?</p> <p>21 A. I have extensive experience with the testing</p> <p>22 profession generally.</p> <p>23 Q. The testing profession.</p> <p>24 A. Yes.</p>	<p>1 Q. A student goes to Optima University and passes</p> <p>2 an exam. Their exam questions and then the exams that</p> <p>3 were retrieved from Optima University, who actually</p> <p>4 does that comparison?</p> <p>5 A. The comparison would have been in terms of the</p> <p>6 test-content match between the examination and what was</p> <p>7 retrieved from Optima.</p> <p>8 I don't know the individual person, but it</p> <p>9 would likely be the responsibility of someone in our</p> <p>10 test development unit.</p> <p>11 Q. Who heads that development?</p> <p>12 A. Currently it's Dr. Steven Haist.</p> <p>13 Q. After matching questions, who would be</p> <p>14 responsible for seeing whether or not they were exposed</p> <p>15 on a person-specific exam?</p> <p>16 A. Well, I'm not sure I know what you mean by</p> <p>17 "exposed." You mean did they actually just appear on a</p> <p>18 form, on an exam?</p> <p>19 Q. Yes.</p> <p>20 A. Again, I don't know an exact person. It</p> <p>21 sounds like it would be a collaboration between the</p> <p>22 test development unit I mentioned before and someone</p> <p>23 who was involved in scoring the examination.</p> <p>24 So, we have a scoring service unit, so it</p>
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<p>1 Q. To the best of your knowledge, is it possible</p> <p>2 for a person to fail an exam multiple times and then</p> <p>3 pass?</p> <p>4 A. Yes.</p> <p>5 Q. Is it possible for an examinee to fail</p> <p>6 multiple times and then do very well on an exam?</p> <p>7 A. I suppose it's possible. It's probably less</p> <p>8 common, I think.</p> <p>9 Q. But possible.</p> <p>10 A. Yes.</p> <p>11 Q. Is the only way for that to happen if a person</p> <p>12 has access to the legal questions?</p> <p>13 A. No.</p> <p>14 Q. If a person -- would you say it's possible, if</p> <p>15 a person focuses on material for longer periods of</p> <p>16 time, especially weaker areas, that they could excel on</p> <p>17 an exam?</p> <p>18 A. It is possible.</p> <p>19 Q. Just to go back: As a VP of licensing</p> <p>20 programs, when they do data matches on questions that</p> <p>21 were said to be at Optima University in cases of</p> <p>22 students who had a passing score, do you know who at</p> <p>23 NBME would have run that analysis?</p> <p>24 A. Could you ask it one more time?</p>	<p>1 might be something that would be a collaboration</p> <p>2 between those two units.</p> <p>3 Q. Can you say that again? Scoring. . .</p> <p>4 A. Scoring Services.</p> <p>5 Q. Is that employed by NBME or outsourced to</p> <p>6 somebody else?</p> <p>7 A. It's all part of NBME.</p> <p>8 Q. Part of NBME, okay. So, the data given to</p> <p>9 students regarding questions that were exposed and the</p> <p>10 amount of exposure, how many they got right and the</p> <p>11 time they took on those questions, would have been</p> <p>12 reported forward by the scoring services unit and the</p> <p>13 patient development test as their report? Is that how</p> <p>14 it works?</p> <p>15 A. What you described is something different.</p> <p>16 First of all, we wouldn't give it to students, so it's</p> <p>17 not something to give the students. So, could you ask</p> <p>18 your question again, please?</p> <p>19 Q. The Office of the Secretariat gives any</p> <p>20 student who needs to go before the committee for score</p> <p>21 validity a letter, and on that letter it outlines what</p> <p>22 they said were exposed questions as well as the time</p> <p>23 they took on each question and those that they got</p> <p>24 correct.</p>

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<p>1 That data, who was the one who actually 2 creates or runs that data for NBME? 3 A. It's going to get even more -- I'm going to 4 add even more departments because that report included 5 not only information on what was exposed and not 6 exposed, how well the student did, but also had some 7 timing information. 8 So, really, it could be -- and again, I don't 9 know the exact person, but that could potentially 10 include the test development department, our scoring 11 services unit. We also have an operations research 12 unit which might have contributed; and a fourth unit, 13 which is Measurement Consulting Services. 14 Q. Is that standard practice on every exam taken 15 by every individual? 16 A. It doesn't occur with every exam. 17 Q. So, when taking an assessment of all the 18 students or a control group, was this type of detail 19 given to all examinees? 20 A. All examinees who have taken USMLE? 21 Q. Yes, because you're saying it's not the 22 standard practice to do it for everybody, so my 23 question is: If there is a control group of all 24 examinees who took it at that time, is it run on every</p>	<p>1 chose to appear before them. 2 Q. Could you tell me some of the other variables? 3 A. Yes. The evidence about them having been 4 connected with Optima, the timing of that connection; 5 the information about the USMLE performances, including 6 the passing outcome; and the data that you referred to 7 in terms of the agreement, performance and timing. 8 Again, there might have been additional 9 variables which would vary from case to case. Again, 10 each case had unique features. 11 Q. Would the unique features for each case be 12 specific to the validity of that exam? 13 A. Can you ask that again? 14 Q. In other words, the criteria when trying to 15 validate an exam, do you focus specifically on that 16 exam? 17 A. Actually, I'm not sure how to even answer. 18 Q. Let me rephrase: Do prior attempts on an 19 examination factor into whether the passing score for 20 an individual is valid or not? 21 A. I don't know that I can speak for the 22 committee, but really the intent is to try to get them 23 as much information as possible. 24 So, if there was a prior history for the</p>
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<p>1 exam? 2 A. What you're describing is run was triggered by 3 the referral of individuals to the community on score 4 validity. 5 Q. All right. Would you say that the data that 6 is supplied on that letter is a complete analysis of a 7 student's performance? 8 A. Well, it's not an analysis of a student's 9 performance, but it addresses and informs the question 10 being posed to the committee on score validity. 11 Q. Do you believe other variables would affect a 12 person's performance besides those that would have been 13 put in that letter? 14 A. Well, the letter, again, wasn't about their 15 performance. It was intended to inform discussions 16 about whether or not there was comfort in the passing 17 outcome for individuals. 18 Q. Okay. Was there a threshold, from a licensing 19 perspective or from a committee perspective, that had 20 to have met to say that they were not comfortable that 21 this was a true passing score? 22 A. There wasn't a set threshold, to my knowledge. 23 The committee was asked to consider a number of 24 variables, including the testimony of individuals who</p>	<p>1 individual, all of that would have been shared with the 2 committee. 3 Q. Does prior employment with the test-taking 4 course such as Optima University factor into whether or 5 not a test score is valid? 6 A. One of the issues before the committee had to 7 do with evidence that suggested some nexus with Optima, 8 and that could have happened several different ways. 9 It could have someone being a student or being in 10 connection with terms of employment. 11 So, I believe all that information would have 12 been used with the committee and I think was probably 13 shared with them, if we had information. 14 Q. Was the committee ever instructed that at the 15 time of the hearing for Mathew Thomas, which is 16 December 16, 2009, that Optima was yet to have been 17 found guilty of copyright infringement or having access 18 to questions that may have been on his exam? 19 A. I don't know. 20 Q. Does NBME have specific time-stamp data to 21 show when questions were added to the Optima test bank? 22 A. I don't have any direct knowledge of that. I 23 wasn't involved in that part of the process. 24 Q. If there was such data, who would it go to</p>

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1 first?

2 A. I don't know about who it would go to first,
3 but again the individuals involved in that process
4 probably would have been members of our legal
5 department and our test development department. That
6 would be my assumption.

7 Q. Would they get such documents before you, or
8 would they go to you first before going to those
9 departments?

10 A. It would not go to me first.

11 Q. Okay. When you created the criteria for
12 whether or not students get referred over to the
13 committee of score validity, were there specific
14 individuals that were responsible for determining
15 methodology to decide?

16 A. Well, there is no methodology to decide.
17 Again, as I had mentioned before, there are overall
18 policies that describe what should occur. But there
19 are lots of different situations where we could reach a
20 point where we questioned the validity of a testing
21 outcome.

22 And again, as I think I mentioned before,
23 these cases often differ in many ways. It really isn't
24 a set methodology.

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1 reason to believe that the USMLE program should
2 question the validity of the outcome, we would want to
3 rely, then, upon the expertise and wisdom of the
4 committee on score validity to deal with that.

5 And of course they could decide that a score
6 is indeterminate or not, but the idea would be to let
7 them make that decision.

8 Q. To the extent of your knowledge for the
9 committee on score validity and in the case of Mathew
10 Thomas, how many individuals on that committee have a
11 statistical background or expertise?

12 A. I don't recall who the members were and
13 wouldn't know that kind of background.

14 Q. Okay. Would you say you have analytic or
15 statistical expertise?

16 A. I would say I have expertise in the
17 application of statistics.

18 Q. So, given those data sets, you think that you
19 could apply them forward to the committee of score
20 validity?

21 A. The data sets that I recall us producing, I
22 think, would inform the task for the committee on score
23 validity.

24 Q. But I mean, before getting to the committee on

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1 Q. My question is, when the data comes with
2 comparison of the test taken by a student versus the
3 Optima data bank and the data's given regarding
4 exposed, unexposed and the times, is it an individual's
5 opinion or observation that is then taken forward to
6 decide to move to the committee on score validity, or
7 was there some kind of real analytical number that
8 recommended moving forward to the committee on score
9 validity?

10 A. I don't recall it ever unfolding like that. I
11 don't know that I'm -- maybe I don't understand your
12 question.

13 Q. In other words, was it an individual's opinion
14 that recommended moving it forward or a group of
15 individuals' opinion to move it forward, or was there a
16 set criteria on the basis of analysis that said move it
17 forward?

18 A. It may have been any of those things. Again,
19 the idea is, all the indications varied. The strength
20 of the evidence varied. The numbers would vary. The
21 individuals involved, the different departments
22 involved could vary, so I don't know if there is any
23 one set process.

24 I think, of those involved, if there was any

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1 score validity, you said a group of members decide to
2 move it forward, yes? So, that group is my question.

3 A. Again, I don't know if all the cases were
4 varied in all the ways I described already. Whether or
5 not there was a group making a decision about an
6 individual, it's -- I don't recall. I think that was
7 true for some cases. I don't think it was true for all
8 cases.

9 Q. Okay.

10 A. And beyond what the process -- I don't recall
11 what the process was for your case.

12 Q. So, in any case, would it go straight to the
13 Office of the Secretariat without that committee being
14 involved?

15 A. I think probably that was true.

16 Q. And in the case of Mathew Thomas, who would
17 know whether or not it went to a committee before it to
18 the Office of the Secretariat?

19 A. I don't know. I don't recall.

20 Q. Would the Office of the Secretariat know that?

21 A. They might.

22 Q. In 2009 who would you believe would have been
23 the person that would have had firsthand knowledge
24 regarding that?

7 (Pages 25 to 28)

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<p>1 A. I'm not sure. Probably it would be in the 2 secretariat's records, but I can't identify any one 3 person. 4 Q. Do you know approximately how many questions 5 were in the Optima database? 6 A. No. 7 Q. Do you know approximately how many questions 8 NBME deems was matching? 9 MS. HOLLAND: Objection on the basis 10 I've stated before. 11 BY DR. THOMAS: 12 Q. Do you believe that the data given was an 13 analysis? 14 A. Yes. 15 Q. Were you asked or was the committee on score 16 validity asked or the composite committee asked to give 17 a more detailed, stratified analysis of what they 18 presented to the committee by Mathew Thomas? 19 A. If you're referring to specific requests by 20 Mathew Thomas, I don't recall. 21 Q. The hearing for the committee on score 22 validity, Mathew Thomas brought out that certain topics 23 he would be faster in because the subject matter he was 24 an expert in versus those that he would have taken</p>	<p>1 A. It's possible. 2 Q. When averaging time spent on questions, if a 3 student comes to the last two minutes, the warning that 4 is given during the examination, and they may have 5 five, ten questions left, if they just click an answer 6 all the way through, would that affect the overall time 7 that's considered average on a block? 8 A. I don't understand. 9 Q. In other words, you're taking an exam. You 10 have ten questions left. You're under two minutes and 11 you decide to click through. 12 Evidently you have only a couple seconds on 13 each question. Does that have an effect on the average 14 time it takes on a group of questions? 15 A. An average is really based upon more than one 16 person, so I think that's why I'm having trouble 17 answering your question. 18 Q. The average of that block for that student 19 only. 20 A. It shouldn't. If they answered every question 21 in the allotted time, then the average amount of time 22 would be associated with the full length of time of the 23 block, if I'm understanding your question correctly. 24 Q. So, when you have a set data set that has</p>
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<p>1 longer in because he may not be as strong. 2 In your expertise in developing exams, is that 3 a fair statement that could happen for a student? 4 A. Yes. 5 Q. Could a student have very good knowledge on, 6 let's say, something like psychiatry and get through 7 those questions very quickly? 8 A. Yes. 9 Q. Would that affect the time that a student 10 averaged on a set of questions? 11 A. If it's material the student is familiar with, 12 there is a possibility they could move through them 13 quicker. 14 Q. If there is material that a student was not 15 expecting on an exam or material that they did not prep 16 for because they were not told it would be on the exam, 17 would that entail a student to take longer on a 18 question? 19 A. If it was material in an area the student was 20 not familiar with or material they're not familiar 21 with, then they could take longer on the question. 22 Q. And if they took longer on a question, would 23 that affect them completing a block in the time that's 24 allowed to complete a block?</p>	<p>1 exposed versus unexposed questions, and you decide to 2 run the average time that it took an individual to do 3 those set of questions, if any of those questions fall 4 in those ten questions I referred to before where they 5 just clicked through, would it make the person's 6 average time more or less? 7 A. There is no direct answer. One of the things 8 to realize is that if you're looking at averages of 9 different sets of questions, those questions appear 10 randomly throughout the sections. 11 Q. I understand. 12 A. So, any occasional impact of someone rushing 13 through questions will be distributed across the 14 questions, so I don't think it would necessarily have 15 an impact, big impact, in terms of being able to 16 interpret those data. 17 Q. So, your understanding is that if there are 18 approximately fifty questions and if a person took one 19 minute for twenty-five of them and took less than ten 20 seconds on the other twenty-five because they rushed 21 through, it would have no bearing on the overall 22 average per question. 23 A. That's not what I said. But again, an average 24 is never based upon one person.</p>

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<p>1 Q. I understand. But for the data set in query, 2 would those quicker times affect the overall time per 3 question? Because it seems the data set was about it 4 took X amount of time per question, and that's what the 5 data was presented before the committee on score 6 validity. 7 A. Again, if we deal with overall or averages, 8 it's never going to be based upon one individual. If 9 you're talking about data from one individual, again 10 their average time won't be impacted. But if you were 11 trying to do an average time per item, it would be 12 individual items that would have very short times. 13 Q. So overall, if you have ten items that you're 14 querying, would rushing through half of them or some of 15 them affect the overall average of those items? That's 16 my question. 17 A. No, not necessarily. 18 Q. Okay. 19 A. That's -- okay. 20 Q. That's fine. Was any consideration or 21 analysis added in for questions that were not answered 22 at all? 23 A. I don't think there was any additional 24 analysis.</p>	<p>1 A. No. There is no reason to believe that any 2 content area isn't evenly distributed across both 3 exposed and not exposed test questions. 4 Q. My question is, though: The exposed questions 5 that are being looked at, if a proportion of those 6 exposed questions is from a subject matter that is 7 strong for the individual -- that may have been what 8 their undergrad subject matter was -- is there anything 9 that says that they would not have known those question 10 types or question and answers and answered them quickly 11 and correctly, or it only because they were exposed? 12 A. Now, what you've describe could occur, but it 13 could occur for both the exposed and non-exposed items. 14 Q. So, for a student who is under there -- 15 they're being questioned because they're saying they 16 exam is invalid and they ask for such breakdown, would 17 that not clarify the exposed versus unexposed much 18 better? 19 A. No. 20 Q. Do you believe that performance in certain 21 areas stays consistent through multiple attempts? 22 A. I'm not sure. Could you repeat the question? 23 Q. In other words, if a student takes the exam 24 multiple times, do you believe performance in terms of</p>
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<p>1 Q. So, if a student did not finish a block, would 2 those questions still be part of the denominator? 3 A. Yes. 4 Q. And the time spent on those questions would be 5 zero? 6 A. If we have a student who doesn't finish a 7 block, the amount of time is zero on the items that 8 they don't save. 9 Q. Okay. Were there specific time differences or 10 percentage differences that the committee would have 11 focused on? 12 A. Yes. As part of their deliberations they 13 would be looking for information that would indicate 14 that an individual could potentially have done better 15 on the items they thought were exposed than items they 16 thought were not exposed. 17 And again, the idea would be for those data to 18 inform the decision they need to make about whether or 19 not they think the passing outcome is a valid outcome. 20 Q. So, the items that are exposed, is it safe to 21 say that a subject content that an individual was 22 stronger in would possibly go faster or have a higher 23 percentage correct? Just based on the student's 24 general knowledge of the subject matter.</p>	<p>1 time on questions and the percentage correct across 2 certain question types or question subject matter stays 3 consistent? 4 A. I think it can probably vary depending upon 5 what the individual is doing, whether or not they're -- 6 what happens during the intervening testing attempts in 7 terms of their studying or other activities. 8 Q. Do you believe that a student could be strong 9 one exam and in the next exam be weak in that same 10 subject matter? 11 A. I think there can be variations in 12 performance. 13 Q. And the star reports on the back of any score 14 report would identify their strength on different 15 subject areas, yes? 16 A. That's the intent of the performance profile 17 that's on the back of the score reports. 18 Q. So, is it fair or safe to say that the star to 19 the left is a weaker performance and the stars to the 20 right are a stronger performance? 21 A. It's a fair interpretation. We caution that, 22 if the series of stars overlap each other in any way, 23 then you probably should not think there as being a 24 meaningful difference between the two.</p>

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<p>1 Q. But it is safe to say that a student could</p> <p>2 have a subject matter where there are stars to the</p> <p>3 right and past the median bar, and on the next exam it</p> <p>4 could go left?</p> <p>5 A. They can move around, yes.</p> <p>6 Q. They can move around.</p> <p>7 A. Yes.</p> <p>8 Q. Does that mean that the student had more</p> <p>9 knowledge the first exam versus the second, or was</p> <p>10 better prepared for the exam?</p> <p>11 A. I don't know how to interpret it. I think</p> <p>12 each case would be different.</p> <p>13 Q. Can you say to when NBME was notified about my</p> <p>14 participation in Optima University, or Mathew Thomas'</p> <p>15 participation in Optima University?</p> <p>16 A. I can't.</p> <p>17 Q. Who would be the individual who would have</p> <p>18 been notified of Mathew Thomas' participation in Optima</p> <p>19 University?</p> <p>20 A. I don't know. I can't speak to the</p> <p>21 notification, but I think the department that probably</p> <p>22 would most likely have had the earliest knowledge about</p> <p>23 it would have been our legal department.</p> <p>24 Q. And once notified about a student's</p>	<p>1 Q. In January 2009 I received a call, Mathew</p> <p>2 Thomas received a call, that stated that he should call</p> <p>3 NBME. He then called NBME and spoke to Trish Weaver</p> <p>4 and said that he received a call to call, and she said</p> <p>5 no one called and then he said, "Well, I went to Optima</p> <p>6 University. Could it be regarding that?" He then did</p> <p>7 not receive any information regarding his score being</p> <p>8 invalid until, I believe, July 2009.</p> <p>9 So, now he's told somebody that he called,</p> <p>10 that he went there. Is that amount of time the</p> <p>11 approximate time that all students would have gone</p> <p>12 through?</p> <p>13 MS. HOLLAND: I'm going to object and</p> <p>14 make a motion to strike that testimony. It's the</p> <p>15 witness here has who is being examined, not you,</p> <p>16 Dr. Thomas.</p> <p>17 So, on that basis I'm going to make a</p> <p>18 motion to strike that from the record, that</p> <p>19 question.</p> <p>20 DR. THOMAS: Which question</p> <p>21 specifically?</p> <p>22 MS. HOLLAND: The one you just asked.</p> <p>23 DR. THOMAS: Can you read back the</p> <p>24 question, please?</p>
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<p>1 involvement with Optima University, what should have</p> <p>2 been or would have been the time frame before they were</p> <p>3 contacted or their data was brought forward to the</p> <p>4 committee to evaluate?</p> <p>5 A. I don't really have an opinion about that.</p> <p>6 Again. Again, that's something that's going to vary</p> <p>7 depending on the circumstances.</p> <p>8 Q. Do you believe that over six months is an</p> <p>9 extensive period once notified or becoming aware of a</p> <p>10 student's participation?</p> <p>11 A. No, I think it's going to vary based upon the</p> <p>12 circumstances.</p> <p>13 Q. If a student called up and said that they went</p> <p>14 to Optima University, should they have had their score</p> <p>15 evaluated?</p> <p>16 A. I don't know. You know, again, it would have</p> <p>17 to be all the other circumstances that we talked about</p> <p>18 before in terms of --</p> <p>19 Q. To clarify: Not to go to score validity, but</p> <p>20 to be evaluated by committee to look at the data sets.</p> <p>21 A. No. Well, the committee that you're asking</p> <p>22 about really only deals with individuals who have taken</p> <p>23 USMLE, have had a passing outcome, and they're really</p> <p>24 concerned about the validity of that outcome.</p>	<p>1 (The record was read by the court</p> <p>2 reporter as requested)</p> <p>3 DR. THOMAS: So, we're striking all of</p> <p>4 that?</p> <p>5 MS. HOLLAND: Yes.</p> <p>6 BY DR. THOMAS:</p> <p>7 Q. If a student notified NBME that they went to</p> <p>8 Optima University in January, what would be the</p> <p>9 appropriate time for NBME to go through the processes:</p> <p>10 They went to Optima University, they have a valid score</p> <p>11 and it coincides, as you said before.</p> <p>12 What would be the appropriate time for NBME to</p> <p>13 start contacting them regarding the score?</p> <p>14 A. I don't think there is any set appropriate</p> <p>15 time. Again, it's depends upon the circumstances of</p> <p>16 the case.</p> <p>17 Q. Who would make that determination?</p> <p>18 A. Again, I think -- I don't know who for certain</p> <p>19 would do it as an individual. It's something that</p> <p>20 would involve certainly our legal department, at the</p> <p>21 very least.</p> <p>22 Q. Can you tell me who in the legal department</p> <p>23 would be responsible for such matters?</p> <p>24 A. Not an individual. I don't know of any</p>

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<p>1 individual.</p> <p>2 Q. At that time who would have been in charge of</p> <p>3 the legal department?</p> <p>4 A. At that time it is headed up by Janet Carson.</p> <p>5 Q. So, any notification of a student who went to</p> <p>6 Optima University would have gone to Janet Carson?</p> <p>7 A. I would assume so. There were many cases, and</p> <p>8 again there might have been varying circumstances, but</p> <p>9 I think by and large that probably would have been the</p> <p>10 approach.</p> <p>11 Q. Can you state how many student exams were</p> <p>12 reviewed for attending Optima University?</p> <p>13 MS. HOLLAND: Objection on the grounds</p> <p>14 that were stated before.</p> <p>15 DR. THOMAS: All right.</p> <p>16 BY DR. THOMAS:</p> <p>17 Q. Could you tell me if student scores were done</p> <p>18 on an individual basis, were evaluated on an individual</p> <p>19 basis?</p> <p>20 A. I don't understand the question.</p> <p>21 Q. In other words, when the committee met to go</p> <p>22 over it, did they go over multiple exams the same day,</p> <p>23 or was it every time a student had a situation they</p> <p>24 would meet and discuss it?</p>	<p>1 Q. What is your understanding about the exam</p> <p>2 itself in terms of content for the person taking the</p> <p>3 validation exam?</p> <p>4 A. It has to be the same exam sequence. So, for</p> <p>5 example, if it was a Step 1 examination, it would have</p> <p>6 to be a Step 1 examination and typically the content is</p> <p>7 comparable.</p> <p>8 The minimum passing score that's applied would</p> <p>9 have to be the same minimum passing score that was</p> <p>10 being used for the examination that's in question.</p> <p>11 Q. So, the prior exam.</p> <p>12 A. Yes.</p> <p>13 Q. And when a student has to go for a validation</p> <p>14 exam, is there a special request made to create a</p> <p>15 validation exam?</p> <p>16 A. I think that will vary by case. Often, I</p> <p>17 think, what can be used as an existing test form, but</p> <p>18 again this process comes up under a lot of different</p> <p>19 circumstances, so I couldn't say that there aren't</p> <p>20 times when a validating form has to be made, but I</p> <p>21 don't know that that's always the case.</p> <p>22 Q. In your experience with the USMLE and</p> <p>23 development in scoring, would you say that from 2007 to</p> <p>24 2011 the exam changed?</p>
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<p>1 A. Are you asking about the committee on score</p> <p>2 validity?</p> <p>3 Q. No, I'm talking about the committee that led</p> <p>4 to the referral to the committee on score validity.</p> <p>5 A. Again, I do not know that there was a</p> <p>6 committee that did that for each of the cases.</p> <p>7 Certainly no group formed as a committee that I know</p> <p>8 of.</p> <p>9 Q. If you found a student that had multiple</p> <p>10 attempts, was any type of analysis done on prior exams</p> <p>11 to see their time differences or how long they took on</p> <p>12 questions, to answer questions?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Do you know about the validation process if a</p> <p>15 score is deemed indeterminate?</p> <p>16 A. Yes. And again, this is defined in the</p> <p>17 policies, but the individual has the opportunity to</p> <p>18 retake that examination. And if they pass that</p> <p>19 validation, then the original examination in question,</p> <p>20 the results are released.</p> <p>21 If the person does not pass the validating</p> <p>22 examination, then the prior examination on the question</p> <p>23 becomes permanent and identified as indeterminate. I</p> <p>24 think that's the label used.</p>	<p>1 A. In terms of the competencies being measured?</p> <p>2 Q. Just the exam itself, questions, types of</p> <p>3 questions.</p> <p>4 A. Only in a minor way.</p> <p>5 Q. But did it change?</p> <p>6 A. Only in a minor way.</p> <p>7 Q. The question is did it change, yes or no.</p> <p>8 A. Well, I'm not going to answer yes or no.</p> <p>9 Q. Okay. Would you say there were more or less</p> <p>10 media questions compared to 2007 in the 2011 validation</p> <p>11 exam?</p> <p>12 A. I can't recall the exact timing of the</p> <p>13 introduction of media questions, but I think that they</p> <p>14 certainly probably were in 2011. I don't know how far</p> <p>15 back they go. Very few in the examination. Students</p> <p>16 see very few media questions.</p> <p>17 Q. Very few media questions in total or in</p> <p>18 comparison to 2007?</p> <p>19 A. Again, I can't remember when the multimedia</p> <p>20 were introduced, so I don't recall if it was in 2007. I</p> <p>21 just don't remember. But I meant, relative to the</p> <p>22 entire length of the examination it's very few</p> <p>23 multimedia questions.</p> <p>24 Q. Would you say that over the years media</p>

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<p>1 questions have increased?</p> <p>2 A. A little bit. Again, it still represents a</p> <p>3 very, very small portion of the examination.</p> <p>4 MS. HOLLAND: This may be a good time</p> <p>5 to take a break.</p> <p>6 DR. THOMAS: That's fine.</p> <p>7 (A brief recess was taken)</p> <p>8 DR. THOMAS: We're back on the record.</p> <p>9 BY DR. THOMAS:</p> <p>10 Q. Are validation exams compared before a student</p> <p>11 takes a validation exam for comparability?</p> <p>12 A. One of the requirements for allowing a form to</p> <p>13 be used as a validating exam is some comfort amongst</p> <p>14 staff that it's comparable to the original examination.</p> <p>15 And again, I think the process that you have</p> <p>16 to go through would vary by case, I think, and the</p> <p>17 timing.</p> <p>18 Q. My question is, do you confirm that it's</p> <p>19 comparable before you administer the exam to a student</p> <p>20 who needs to validate?</p> <p>21 A. I'm not sure I would interpret the word</p> <p>22 "confirm," but part of the decision-making process</p> <p>23 would include making sure that the form being used is</p> <p>24 appropriate in terms of its comparability in terms of</p>	<p>1 A. That was my recollection.</p> <p>2 Q. So, then it would be after he took the</p> <p>3 validation exam.</p> <p>4 A. In this case what was done was after the</p> <p>5 examination. That's my understanding.</p> <p>6 Q. Okay, thank you.</p> <p>7 A. Sure.</p> <p>8 Q. In terms of students that had gone to Optima</p> <p>9 University, was there ever any protocol set in place</p> <p>10 for NBME as to how to manage them?</p> <p>11 A. I don't know what you mean by "manage."</p> <p>12 Q. In other words, were they automatically going</p> <p>13 to be considered indeterminate until you could validate</p> <p>14 the score, or was it they're valid until you deem them</p> <p>15 indeterminate?</p> <p>16 What would be the protocol that NBME would</p> <p>17 take?</p> <p>18 A. I don't know that we would use any of those</p> <p>19 phrases. Again, if an individual attended Optima, if</p> <p>20 the timing was right relative to when we thought the</p> <p>21 material was at Optima, and if they took an examination</p> <p>22 and they passed it, if all those things occurred, then</p> <p>23 those individuals would be considered as cases that</p> <p>24 should go to the committee on score validity.</p>
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<p>1 content and statistical properties.</p> <p>2 Q. Did you ask Dr. Haist to do a comparability</p> <p>3 review of the validation exam that Mathew Thomas took</p> <p>4 September 2011 versus the December 31, 2007 exam?</p> <p>5 A. Yes, I did. I'm not sure about the time of</p> <p>6 it, but I know that there was a request that went from</p> <p>7 me to that unit to review the comparability.</p> <p>8 Q. So, my question is: The type of detail or</p> <p>9 review that he did, is it practice to do that before</p> <p>10 administering a validating exam, to confirm that it's</p> <p>11 comparable?</p> <p>12 A. It will vary depending upon the circumstances.</p> <p>13 I think in this situation the amount of time was a</p> <p>14 little bit longer than perhaps some other situations.</p> <p>15 So, it wouldn't be routine. Again, it would vary very</p> <p>16 much by the case, I think.</p> <p>17 Q. In the case of Mathew Thomas, do you know if</p> <p>18 it was requested before his validation exam was taken?</p> <p>19 A. Actually, I don't know.</p> <p>20 Q. Do you know why you would request such a</p> <p>21 comparison to be done?</p> <p>22 A. My request was triggered by, I believe, a</p> <p>23 question that came from Dr. Thomas about comparability.</p> <p>24 Q. So, then --</p>	<p>1 Q. If information were to come forward regarding</p> <p>2 students who went to Optima University that are</p> <p>3 currently in residency or after residency, would steps</p> <p>4 be taken by NBME to validate exams?</p> <p>5 MS. HOLLAND: Objection. It calls for</p> <p>6 speculation, but on the basis that I asserted</p> <p>7 before, I instruct the witness not to answer the</p> <p>8 question.</p> <p>9 BY DR. THOMAS:</p> <p>10 Q. Is it the responsibility of NBME to keep</p> <p>11 consistent with the integrity of the exam?</p> <p>12 A. I'm not sure what "consistent with integrity</p> <p>13 of the exam means." Can you explain further?</p> <p>14 Q. Is it the responsibility of NBME to keep the</p> <p>15 integrity of the exam in that those who pass the exam</p> <p>16 passed it fairly and without any extra assistance or</p> <p>17 legal assistance?</p> <p>18 A. It's certainly our goal.</p> <p>19 Q. So, if information came regarding particular</p> <p>20 students that may have went but are on residency now,</p> <p>21 is it the duty of NBME to look into such matters?</p> <p>22 A. I'm not sure where someone is in the continuum</p> <p>23 of training really would matter. If there was an issue</p> <p>24 about whether or not an outcome in USMLE was really a</p>

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<p>1 valid outcome, we would still be concerned about it.</p> <p>2 Q. My question is, if you're given information</p> <p>3 regarding someone in training who had a significant</p> <p>4 increase in their scores who went to Optima University,</p> <p>5 took the exam coinciding in that time frame, does NBME</p> <p>6 have a duty to look into that matter, regardless if</p> <p>7 they're in training or not?</p> <p>8 A. We'd have to sort of think about how clear the</p> <p>9 information is and how clear the evidence is.</p> <p>10 So, I think if the evidence was clear, was</p> <p>11 supported, and the person had exposure to content they</p> <p>12 shouldn't have seen, took the exam and passed it, I</p> <p>13 think we probably would want to take action on that</p> <p>14 individual.</p> <p>15 But again, everything would have to line up</p> <p>16 and everything would have to be clear, most</p> <p>17 importantly.</p> <p>18 Q. Should I give you an example?</p> <p>19 A. No, not necessary.</p> <p>20 Q. My question, I guess, is: If a student jumps</p> <p>21 from multiple fails to a ninety and went to Optima</p> <p>22 University and has done residency, would NBME have a</p> <p>23 duty to look into that matter? Clear evidence.</p> <p>24 MS. HOLLAND: I'm going to object to</p>	<p>1 copyright material. We would want to warn the students</p> <p>2 to be careful about what kind of test-preparation</p> <p>3 courses they select, which is the kind of message we</p> <p>4 share often with students.</p> <p>5 Q. Are you familiar with the bulletin that NBME</p> <p>6 releases on different NBME-related topics?</p> <p>7 A. No.</p> <p>8 Q. Did the NBME ever put any newscast or</p> <p>9 statement regarding Optima University on their website?</p> <p>10 A. Yes, we do put USMLE postings on the website.</p> <p>11 Q. Was there anything regarding Optima University</p> <p>12 posted?</p> <p>13 A. I think there was.</p> <p>14 Q. Who was in charge of that posting, or who</p> <p>15 decides if the posting will happen and what that would</p> <p>16 be?</p> <p>17 A. Like many of these issues, it's often several</p> <p>18 units would be involved. For something like that, it</p> <p>19 probably involved our legal department, my department,</p> <p>20 perhaps the secretariat. There might have been others</p> <p>21 involved.</p> <p>22 Q. So, any statement made regarding Optima</p> <p>23 University, did you give the -- were you charged with</p> <p>24 giving the okay to put it out there or to post it?</p>
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<p>1 the legal conclusion of the NBME having a duty.</p> <p>2 Having a duty is a legal conclusion.</p> <p>3 BY DR. THOMAS:</p> <p>4 Q. To rephrase: Does your department, as the VP</p> <p>5 of licensing, have a responsibility to inquire into the</p> <p>6 matter?</p> <p>7 A. The circumstances you're describing are not</p> <p>8 particularly clear to me. It's very difficult for me to</p> <p>9 answer the question.</p> <p>10 Q. If NBME is told about a test-prep organization</p> <p>11 that may or may not have copyright infringement issues,</p> <p>12 do you believe that the NBME has a responsibility to</p> <p>13 let students know of an alleged or a possible issue</p> <p>14 that could affect their medical career?</p> <p>15 A. You used the word alleged, so I guess my</p> <p>16 concern would be, if there was overwhelming evidence</p> <p>17 that test content had been stolen and compromised and</p> <p>18 was being exposed to students, I think we would need to</p> <p>19 act upon that.</p> <p>20 Q. Would you say what kind of action the NBME</p> <p>21 would be at liberty to do?</p> <p>22 A. Well, I think we would be concerned -- well, I</p> <p>23 don't know about "at liberty to do," but certainly we</p> <p>24 would be concerned about the course continuing to share</p>	<p>1 A. No, I'm not charged with it. I think I'm one</p> <p>2 of many perspectives that needs to be involved in a</p> <p>3 decision to post that information.</p> <p>4 Q. Who is the ultimate person to decide yes or</p> <p>5 no?</p> <p>6 A. There is no one person.</p> <p>7 Q. So, if half the people recommend it and half</p> <p>8 do not recommend it, who makes that final decision?</p> <p>9 A. I think the group would probably recognize</p> <p>10 that, if as many as half the people decide it was a</p> <p>11 good idea, then we probably would do something.</p> <p>12 Q. So, it's a majority-group decision?</p> <p>13 A. Typically, yes.</p> <p>14 Q. Can you say what prompted the timing of the</p> <p>15 notification regarding Optima University?</p> <p>16 A. I don't know.</p> <p>17 Q. Was there any specific trigger that prompted</p> <p>18 the notification of Optima University?</p> <p>19 A. Again, I'm not sure what you mean by</p> <p>20 "notification of Optima."</p> <p>21 Q. The posting that was made.</p> <p>22 A. I don't recall the details of the posting.</p> <p>23 All I can acknowledge is that there was a posting about</p> <p>24 Optima University. So, I'm not even sure what the</p>

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<p>1 timing was of that.</p> <p>2 Q. Did the posting -- or to your recollection,</p> <p>3 did NBME ever ask students to come forward if they were</p> <p>4 a student at Optima University?</p> <p>5 A. I don't recall, but I don't know if we did or</p> <p>6 didn't. I just don't recall.</p> <p>7 Q. Would NBME have the capability to set such a</p> <p>8 posting, to say any students that went to Optima</p> <p>9 University should contact the office?</p> <p>10 A. Can you ask that again? I missed the</p> <p>11 beginning.</p> <p>12 Q. Would NBME have the capability to put up a</p> <p>13 posting that stated if you were an individual who</p> <p>14 attended Optima University, you should contact the</p> <p>15 office at NBME?</p> <p>16 A. We certainly would have the capability</p> <p>17 technically to do it. I don't know if we would want to</p> <p>18 do it. That would be a separate issue.</p> <p>19 Q. Would you not want to do it if you had know</p> <p>20 that the course has alleged copyrighted material and</p> <p>21 was giving them an unfair advantage? Because once that</p> <p>22 student sits for the exam, they now have to go through</p> <p>23 this whole process with score validity.</p> <p>24 A. I'm not sure I understand. When you say would</p>	<p>1 BY DR. THOMAS:</p> <p>2 Q. You're the VP of licensing. Is there any rule</p> <p>3 for NBME that says a person must pass all their exams</p> <p>4 within seven years? Or USMLE.</p> <p>5 A. There is no USMLE-imposed rule that limits an</p> <p>6 individual to completing an examination within a</p> <p>7 seven-year sequence.</p> <p>8 Q. The six-attempt rule, whose rule that is?</p> <p>9 A. That's USMLE's.</p> <p>10 Q. So, the six-attempt rule grandfathered</p> <p>11 students who had taken the exam multiple times until</p> <p>12 2013.</p> <p>13 A. I don't know that I would call it</p> <p>14 grandfathered. I think it established a date where new</p> <p>15 USMLE students -- where the six-attempt rule would</p> <p>16 apply to them, and there was a transition period during</p> <p>17 which people who were already involved in the process</p> <p>18 could try to finish before the six-year rule.</p> <p>19 It was about a year, I think, that the</p> <p>20 transition went on.</p> <p>21 Q. So, to clarify your understanding: If a</p> <p>22 student who is a foreign graduate does not pass all</p> <p>23 three exams within seven years, what happens if they</p> <p>24 have more than six attempts on an exam that's pending?</p>
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<p>1 they not want to do it, can you. . .</p> <p>2 Q. Would the NBME want students to come forward</p> <p>3 if they went to Optima University?</p> <p>4 A. I don't know.</p> <p>5 Q. Are you familiar with the seven-year rule for</p> <p>6 ECFMG?</p> <p>7 A. I'm aware of it. I don't know very much of the</p> <p>8 details.</p> <p>9 Q. Does NBME have any part in the seven-year rule</p> <p>10 for ECFMG?</p> <p>11 A. My understanding is that that ruling really</p> <p>12 relates to ECFMG certification, so we would not have</p> <p>13 any direct connection with that.</p> <p>14 Q. Does USMLE have any suggestions or</p> <p>15 recommendations regarding the seven-year rule in terms</p> <p>16 of the policy at ECFMG?</p> <p>17 A. I don't think we have any formal</p> <p>18 recommendation.</p> <p>19 Q. So, from a licensing standpoint, that is</p> <p>20 strictly an ECFMG rule.</p> <p>21 MS. McENROE: Objection to form. Can</p> <p>22 you restate the question?</p> <p>23 DR. THOMAS: Yes.</p> <p>24</p>	<p>1 MS. McENROE: Objection to the form.</p> <p>2 You may answer.</p> <p>3 THE WITNESS: I didn't understand it,</p> <p>4 so I can't.</p> <p>5 BY DR. THOMAS:</p> <p>6 Q. A student has taken the exam and passed on the</p> <p>7 seventh attempt.</p> <p>8 A. Seventh attempt, okay.</p> <p>9 Q. The seven-year rule -- now he's outside the</p> <p>10 seven years and has to retake the exam. Is he eligible</p> <p>11 to retake the exam?</p> <p>12 MS. McENROE: Objection to the form.</p> <p>13 You may answer.</p> <p>14 THE WITNESS: May I answer?</p> <p>15 MS. HOLLAND: Yes.</p> <p>16 MS. McENROE: Yes.</p> <p>17 THE WITNESS: The seven-year rule has</p> <p>18 nothing to do with USMLE requirements. Currently</p> <p>19 there is a six-attempt limit, so individuals who</p> <p>20 have taken the examination six or more times are</p> <p>21 no longer eligible to sit for a USMLE examination.</p> <p>22 BY DR. THOMAS:</p> <p>23 Q. To your understanding, if a student takes a</p> <p>24 USMLE exam and seven years pass, what happens to that</p>

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<p>1 exam score?</p> <p>2 A. Nothing happens to it from a USMLE</p> <p>3 perspective.</p> <p>4 Q. So, it's still a passing score.</p> <p>5 A. Whatever the score was, the score was. It</p> <p>6 still exists in the system. It could have been a fail;</p> <p>7 it could have been a pass.</p> <p>8 Q. Okay. So, for a score to go invalid, that's</p> <p>9 an ECFMG -- I mean expired, that would be an ECFMG</p> <p>10 decision to make it expired past seven years.</p> <p>11 MS. McENROE: Objection to the form.</p> <p>12 THE WITNESS: And I can't speak to</p> <p>13 ECFMG's position.</p> <p>14 BY DR. THOMAS:</p> <p>15 Q. If ECFMG knew that an exam now expired, do</p> <p>16 they communicate that with NBME?</p> <p>17 A. I'm not aware of ECFMG ever saying that an</p> <p>18 examination is expired.</p> <p>19 Q. So, if a student takes an exam seven years</p> <p>20 past, they have not completed all three, ECFMG will</p> <p>21 expire an exam. NBME is not notified of that, or is</p> <p>22 NBME notified of that?</p> <p>23 MS. McENROE: Objection to the form.</p> <p>24 THE WITNESS: The premise to your</p>	<p>1 year to become eligible for ERAS and the match?</p> <p>2 A. Do we require someone to take an examination</p> <p>3 in their eighth year?</p> <p>4 Q. Meaning a foreign grad, ECFMG has now made</p> <p>5 seven years you have to pass everything, so the eighth</p> <p>6 year does NBME require them to retake that exam?</p> <p>7 MS. McENROE: Objection to the form.</p> <p>8 THE WITNESS: We do not; NBME does not.</p> <p>9 BY DR. THOMAS:</p> <p>10 Q. Does USMLE require them to take that exam?</p> <p>11 A. No.</p> <p>12 DR. THOMAS: That's it for me.</p> <p>13 MS. HOLLAND: I do have a few</p> <p>14 questions.</p> <p>15 (EXAMINATION)</p> <p>16 BY MS. HOLLAND:</p> <p>17 Q. Dr. Dillon, I'm going to give you what I'm</p> <p>18 marking as exhibit two.</p> <p>19 (Exhibit No. 2 was marked for</p> <p>20 identification)</p> <p>21 BY MS. HOLLAND:</p> <p>22 Q. Dr. Dillon, do you recognize exhibit two?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Can you tell us what it is?</p>
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<p>1 question, I don't have knowledge about how ECFMG</p> <p>2 does it and what they do with it, so I don't know</p> <p>3 how to answer your question.</p> <p>4 BY DR. THOMAS:</p> <p>5 Q. My question is, if I take an exam in 2006 --</p> <p>6 it is now 2013 -- ECFMG is saying that it's now expired</p> <p>7 in seven years because I have not completed. Can a</p> <p>8 student apply to retake the exam?</p> <p>9 MS. McENROE: Objection to the form.</p> <p>10 A. If an examinee has not passed the</p> <p>11 examination --</p> <p>12 Q. He has passed the original -- I'll clarify.</p> <p>13 The examinee passes Step 1 in 2000. He has not</p> <p>14 completed all three exams, Step 1, Step 2 CK, Step 2</p> <p>15 CS, by 2007. It is now 2008.</p> <p>16 Can they now register and apply for Step 1</p> <p>17 again? Or are they required, from an NBME standpoint,</p> <p>18 to retake that Step 1 exam?</p> <p>19 MS. McENROE: Objection to the form.</p> <p>20 A. I'm sorry, I still don't understand the</p> <p>21 question. It's very complicated. I just don't</p> <p>22 understand what you're asking.</p> <p>23 Q. If a student takes an exam one day, are they</p> <p>24 required by NBME to retake the exam on their eighth</p>	<p>1 A. It's the USMLE policies and procedures</p> <p>2 regarding indeterminate scores.</p> <p>3 Q. To your knowledge, were these policies and</p> <p>4 procedures presented to Mathew Thomas throughout the</p> <p>5 course of his Step 2 CK score being reviewed?</p> <p>6 A. Yes, to my knowledge.</p> <p>7 Q. I'd like you to look under A, policies, number</p> <p>8 two. Can you read for me the first sentence of A2?</p> <p>9 A. Sure: It reads, "Statistical procedures will</p> <p>10 be applied routinely, as well as in response to</p> <p>11 particular information, to identify scores that may be</p> <p>12 subsequently classified as indeterminate."</p> <p>13 Q. Okay. Can you read, under B, 1a, the first</p> <p>14 sentence there?</p> <p>15 A. "...the results of appropriate statistical</p> <p>16 analyses identifying and aberrancy(ies) in</p> <p>17 performance" -- actually, let me start over again</p> <p>18 because really the sentence begins before that.</p> <p>19 Q. Above, right.</p> <p>20 A. The sentences reads, "These procedures are</p> <p>21 applicable to instances in which. . . the results of</p> <p>22 appropriate statistical analyses identify an</p> <p>23 insufficiency in performance, i.e., indicate that a</p> <p>24 score does not or may not represent a reasonable</p>

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<p>1 assessment of an examinee's knowledge or competence 2 sampled by the examination." 3 Q. And then the next sentence there reads "Such 4 statistical analyses include, but are not limited to," 5 and then there three items. Can you read those three 6 items to us? 7 A. Sure. These would be analyses which, first, 8 "indicate that the pattern of scores for a given 9 examinee is markedly nonuniform and one or more section 10 scores for the examinee is below the passing level"; 11 the second reads, "indicate that the current scores for 12 a given examinee show an unexpectedly large increase 13 over the examinee's most recent prior scores on the 14 same Step" or, the third, "indicate that the degree of 15 agreement that is observed between the wrong answers 16 given by two examinees is unusually high as compared 17 with the degree of agreement that would be expected to 18 occur between two randomly selected individuals drawn 19 from a comparison group of examinees. . ." 20 Q. Okay. That list of three items, is that an 21 exhaustive list or are those simply three examples? 22 A. Those are three examples. 23 Q. With regard to Mathew Thomas, I'm going to 24 show you what I've marked as exhibit three.</p>	<p>1 percent exposed or percent unexposed. That's really 2 what we mean by that those terms "exposed" and 3 "unexposed." 4 The dates they're representing here really 5 come from the test examination that was taken by Dr. 6 Thomas, and actually by an additional 1,100-plus 7 individuals who had taken this Step 2 CK. They all had 8 the same test form as Dr. Thomas. 9 So, what's represented here is performance 10 information for Dr. Thomas on what we term the exposed 11 test questions and the unexposed test questions, and 12 then the same information in terms of the average 13 performance of the balance of the 1,100 individuals who 14 also took the same form in both of those same 15 categories: The exposed category and the unexposed 16 category. 17 So, the top portion of this document really 18 represents the percent correct scores in those 19 categories. The bottom part of the document still 20 addresses the same categories of test questions, the 21 exposed and non-exposed test questions, but represents 22 the average amount of time taken on those sets of test 23 questions. 24 And again, it's presented for both Dr. Thomas</p>
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<p>1 (Exhibit No. 3 was marked for 2 identification) 3 BY MS. HOLLAND: 4 Q. Taking a look at exhibit three, do you 5 recognize this? 6 A. I do. 7 Q. What is it? 8 A. It's a document that was included with the 9 materials that were presented to the committee on score 10 validity for the Dr. Thomas case. 11 Q. At the same time that the committee on score 12 validity was reviewing Dr. Thomas' Step 2 CK score, was 13 Dr. Thomas also provided with a copy of this document? 14 A. It's my understanding that he was, yes. 15 Q. Can you explain to us what this document is? 16 A. Sure. The document's really intended to 17 address some fairly straightforward questions. 18 Once we had identified the test questions that 19 we believe were exposed in our test pool, we were able 20 for any one test form that was taken by an examinee to 21 essentially score that individual, that examinee, on 22 the items we believe were exposed versus the ones for 23 which we have no reason to believe they were exposed. 24 So, when you look at this sheet, you'll see</p>	<p>1 as an individual and then the average time spent on 2 these same questions by the full group of 1,100-plus 3 individuals who took the same test form. 4 Q. Okay. Is this form, exhibit three, the 5 statistical analysis that is referenced by the policies 6 and procedures in exhibit two? 7 A. This represents the analysis that's alluded to 8 in the policies. This is again an example of another 9 kind of analysis that could be done. 10 Q. And what is the purpose of exhibit three? 11 What's the purpose of this one-page form? 12 A. So, in a situation where an individual might 13 have had exposure to test content, in addition to all 14 the other information we would bring to the score 15 validity committee in terms of the evidence of that 16 nexus and the timing and so forth, there is an interest 17 in whether or not, if there was exposure, whether or 18 not the individual might have gained some advantage by 19 having had exposure in terms their performance on the 20 examination, and that might be represented a couple 21 different ways. 22 One way is pretty straightforward: You would 23 just look to see whether or not the individual did 24 better on that content than in other areas, the areas</p>

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<p>1 that are not exposed; and another approach to it would</p> <p>2 be how much time does the individual spend on the test</p> <p>3 question, with the theory being if an individual had</p> <p>4 prior exposure to specific test questions, they are</p> <p>5 likely to move through those questions and respond</p> <p>6 quicker than they would with material that they had not</p> <p>7 seen before. So, that's really the intent of this.</p> <p>8 The other piece of this that's important is</p> <p>9 trying to get a sense for how big a difference is an</p> <p>10 usually big difference.</p> <p>11 So, the one thing we try to do is to give the</p> <p>12 committee a sense for how frequently within the group</p> <p>13 of 1,100-plus individuals who took the same form, how</p> <p>14 often we saw the same size differences as we saw for</p> <p>15 Dr. Thomas in both the performance category and the</p> <p>16 timing category.</p> <p>17 Q. And with regard to that, how unusual was the</p> <p>18 differential in Dr. Thomas' performance as compared</p> <p>19 with the comparison form?</p> <p>20 A. In both the performance category and the</p> <p>21 timing category, when we looked at all the other</p> <p>22 individuals with the same test form, the difference</p> <p>23 that we detected was really greater than at least</p> <p>24 ninety-nine percent of the balance of the group, the</p>	<p>1 The license to practice medicine is granted by</p> <p>2 each of the individual states, and each state has a</p> <p>3 variety of requirements, but all of them, as part of</p> <p>4 the variety of requirements, have some examination</p> <p>5 requirement.</p> <p>6 All the states accept USMLE, and really the</p> <p>7 information we're trying to provide for them is some</p> <p>8 indication as to whether or not the individual has sort</p> <p>9 of the minimum competency, the minimum requirements in</p> <p>10 terms of skills and knowledge, to begin the practice of</p> <p>11 medicine.</p> <p>12 And I think I may have said this already:</p> <p>13 Currently all the individual states accept the USMLE</p> <p>14 outcome for that decision.</p> <p>15 Q. You mean accept as in 'acc'?</p> <p>16 A. 'Acc,' yes.</p> <p>17 Q. So, you told us the primary users of the USMLE</p> <p>18 or the end user for the USMLE are the state licensing</p> <p>19 boards. Is that right?</p> <p>20 A. Yes.</p> <p>21 Q. What relationship does the NBME play with</p> <p>22 regard to the protection of the public?</p> <p>23 A. Well, essentially, if you focus on the primary</p> <p>24 users, the individual state, really the process they're</p>
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<p>1 group of 1,162 individuals.</p> <p>2 Q. In general, Dr. Dillon, what is the purpose of</p> <p>3 the National Board of Medical Examiners?</p> <p>4 A. Well, the national board is essentially an</p> <p>5 assessment organization. We're non-profit. We create</p> <p>6 assessment tools that are used by primarily the medical</p> <p>7 professions to make decisions about individuals at</p> <p>8 various levels.</p> <p>9 It could be for decisions about progression</p> <p>10 through medical school; it could be about the initial</p> <p>11 granting of a license to practice medicine; it could be</p> <p>12 about being credentialed as a specialist in some way.</p> <p>13 So, we have a variety of clients that we work</p> <p>14 with. And really the idea is, we develop assessments</p> <p>15 that inform those decisions about those individuals.</p> <p>16 Q. And in developing those assessments, what is</p> <p>17 the ultimate aim of the National Board of Medical</p> <p>18 Examiners?</p> <p>19 A. Well, I can speak specifically about USMLE, if</p> <p>20 that would help.</p> <p>21 Q. Yes, that would help.</p> <p>22 A. As an example. So, really the idea -- the</p> <p>23 primary user of the information that comes from USMLE</p> <p>24 is the state licensing authority.</p>	<p>1 going there through is, they're trying to credential</p> <p>2 individuals and their focus is on patient safety, the</p> <p>3 quality of patient care.</p> <p>4 So, what we do is, we're informing the</p> <p>5 decision we believe ultimately would impact the care of</p> <p>6 patients, and really that's the focus when we're</p> <p>7 developing our content. It's what we have our item</p> <p>8 writers and case developers focus on.</p> <p>9 So, ultimately the impact is whether or not</p> <p>10 the individuals would qualify to begin patient care.</p> <p>11 Q. Can you define for me what psychometrics are?</p> <p>12 A. Broadly defined, it's really the field that's</p> <p>13 focused on testing generally. So, a psychometrician,</p> <p>14 for example, would be an individual knowledgeable about</p> <p>15 test design, scoring, approaches to reporting, the</p> <p>16 research that needs to be done in order to support the</p> <p>17 validity of the scores and so forth.</p> <p>18 Q. What is the purpose of the USMLE committee on</p> <p>19 score validity?</p> <p>20 A. Their primary purpose is to make decisions</p> <p>21 about whether or not they believe a passing outcome is</p> <p>22 really a valid outcome.</p> <p>23 They don't focus on whether or not they think</p> <p>24 there have been any irregularities that have occurred,</p>

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<p>1 and really purely focused on whether or not they can 2 support that label, that passing label, or not. That's 3 essentially the role of the committee. 4 Q. When you say "irregularities," what do you 5 mean by that? 6 A. That's the label we use broadly for any 7 incidents that occur that are in violation of our rules 8 and in violation of copyright and so forth. 9 So, examples would be of stealing test content 10 or producing fraudulent credentials, attempting to 11 remove information from a testing site. Those would 12 all be considered irregularities. 13 Those are not really the responsibility of the 14 committee on score validity. That's really focusing on 15 whether or not that passing outcome is a valid outcome. 16 Q. Is there a different committee that deals with 17 allegations of irregularities? 18 A. Through the history of USMLE, we consider 19 those are separate functions with separate policies. 20 There have been periods where we've asked the 21 same groups to try to perform the same activities and 22 times that we haven't, so that's varied a little bit. 23 But we think of them as -- they're certainly 24 different questions of policies and different purposes,</p>	<p>1 Q. Yes. 2 A. The outcomes of the committees vary. They 3 weren't always the same decision. 4 Q. Under the policies and procedures, is there 5 ever any other kind of statistical analysis other than 6 exhibit three that was presented and given for a 7 student for their exam? 8 A. Again, are we -- if we're talking about Optima 9 students? 10 Q. Right. 11 A. There was no other analysis other than this 12 that was done. 13 Q. Okay. 14 MS. HOLLAND: I do not have any further 15 questions -- oh, I do have one other question. 16 I'm sorry. 17 BY MS. HOLLAND: 18 Q. If Dr. Thomas were to pass Step 1, Step 2 CS, 19 Step 2 CK and Step 3, would he automatically receive a 20 license to practice medicine? 21 A. No. Passing the USMLE sequence doesn't result 22 in an automatic licensing. 23 Again, I mentioned before the licenses are 24 granted by the individual states. They have their own</p>
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<p>1 but the individuals may have sometimes been the same or 2 may have been different at points in time. 3 Q. Dr. Thomas in this case went before the 4 committee on score validity. At the time was that 5 separate from the committee on irregular behavior, if 6 you know? 7 A. I think at that time it was the same group who 8 performed that function. That's my recollection. 9 Q. Okay. When I showed you exhibit three before, 10 which is the one-page analysis Dr. Thomas' Step 2 CK 11 score, was this kind of document the same document that 12 was prepared with regard to anyone who came before the 13 committee on score validity at the same time as Dr. 14 Thomas or around the same time? 15 A. Around the same time. It was primarily used 16 for individuals who were identified because of their 17 Nexus with the Optima program. 18 Q. With regard to those individuals, were the 19 same policies and the procedures followed? 20 A. Yes. 21 Q. Were the outcomes of those policies and 22 procedures being applied the same for every individual? 23 A. No. I'm sorry, by "outcomes," do you mean the 24 decision of the committee?</p>	<p>1 additional requirements beyond the examination 2 requirement. In fact, I think right now every 3 licensing jurisdiction requires some amount of 4 postgraduate training. 5 So, a person would have to also complete some 6 amount of postgraduate training and some states might 7 have some other requirements. But no, passing USMLE 8 doesn't immediately result in a license. 9 MS. HOLLAND: I don't have anything 10 else. 11 MS. McENROE: I have just a few 12 follow-up questions. 13 (EXAMINATION) 14 BY MS. McENROE: 15 Q. Dr. Dillon, you had testified that the 16 seven-year rule that's been discussed here is an ECFMG 17 rule. Is that correct? 18 A. Yes. 19 Q. You said that USMLE does not impose a 20 seven-year rule. Does the USMLE recommend a seven-year 21 rule? 22 A. Not for ECFMG certification, but we make a 23 recommendation to the state licensing authorities that 24 they consider as important the length of time it takes</p>

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<p>1 an individual to get through the USMLE sequence, and 2 some states have adopted a time limit for that and 3 others haven't. 4 So, we have a recommendation that there be an 5 amount of time. I think currently it's a seven-year for 6 that period of time. There are also some individuals, 7 through the nature of their training, seven years is 8 not long enough, ones who are pursuing both an M.D. and 9 a Ph.D. at the same time. 10 So, the state boards in those cases, you might 11 want to allow a longer period of time, but for most 12 cases we recommend the seven-year period. 13 Q. Do you know why USMLE recommends a seven-year 14 period? 15 A. It wasn't invented by us. The idea of there 16 being a limited amount of time to get through the 17 examination process has been around for many, many 18 years at the state board level, so many states have 19 done so for a long, long period of time. I think we 20 support it, which is why we wanted to explicitly make 21 it a recommendation. 22 And I think the idea is still that the notion 23 is, it's valuable to try to assess an individual on all 24 the competencies we're trying to assess within some</p>	<p>1 alone, just because of some imprecision in the scoring, 2 an individual who isn't qualified might pass the 3 examination. 4 That's one of the reasons -- the other major 5 reason is, we worry about with the security of the test 6 content. The notion that the examination just can be 7 taken an unlimited number of times and have all that 8 exposure, we worry about it being stolen and somehow 9 being used to undermine the system. So, it's a variety 10 of reasons. 11 Q. Dr. Dillon, would it be fair to say you 12 testified earlier that passing all of the USMLE steps 13 does not result in automatic licensure? 14 A. Yes. 15 Q. And you had mentioned, in connection with 16 that, that all states, at least to your knowledge, 17 require some sort of practical-experience component for 18 licensure? 19 A. Actually, postgraduate training in an 20 accredited program. 21 Q. Would it be fair for the layperson to call 22 that a residency? 23 A. Oh, yes. 24 MS. McENROE: I have no further</p>
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<p>1 limited amount of time. In other words, it shouldn't 2 take a long period of time to do that, and that's 3 really the motivation behind it. 4 Q. There has been some discussion today about a 5 six-attempt rule. Would it be fair to describe that as 6 a USMLE rule? 7 A. Yes. 8 Q. What is the purpose of that rule? 9 A. And again, it's a rule not unlike the one 10 before. It's not a rule that we invented. Again, this 11 is a rule that many of the individual states already 12 impose in terms of the numbers of the times a person 13 can take an examination. 14 And in fact, the number six is really -- of 15 all the states that have that requirement, we believe 16 that six is the highest number that any state uses. 17 So, that's a little background behind that number. 18 But again, the notion is that an individual 19 ought to be able to demonstrate their abilities with 20 some limited number of attempts to the examination. 21 To allow an individual to sort of an unlimited 22 number of attempts is in some ways sort of essentially 23 a disservice to the individual, but what you worry 24 about is whether or not at some point, just by chance</p>	<p>1 questions. Thank you very much, doctor. 2 THE WITNESS: Sure, thank you. 3 (The deposition was concluded at 5:00 4 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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CERTIFICATION

I hereby certify that the testimony and the proceedings in the foregoing matter are contained fully and accurately in the stenographic notes taken by me and that the copy is a true and correct transcript of the same.

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